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C O N F I D E N T I A L SECTION 01 OF 02 COLOMBO 001255

SIPDIS

SENSITIVE

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SUBJECT: SRI LANKA: SUPREME COURT ORDERS TEMPORARY STAY ON
SECTIONS OF P-TOMS

REF: COLOMBO 1216

Classified By: Amb J. Lunstead for Reasons 1.4 (b) and (d)

SUMMARY

1. (SBU) In response to petitions filed by members of the Marxist Janatha Vimukthi Peramuna (JVP) party, a three-member panel of the Supreme Court (SC) granted a temporary stay order for four key sections of the Post-Tsunami Operational Management Structure (P-TOMS) on July 15 (Reftel). Despite staying certain portions of the P-TOMS, the Court declared that the President has the right to conclude agreements with the Liberation Tigers of Tamil Eelam (LTTE), and affirmed the legality of the Cease Fire Agreement (CFA) (Septel). The Government of Sri Lanka (GSL) has until July 29 to file any objections to the interim SC judgement. GSL concerns may then be taken up on September 12, when final arguments are scheduled to begin. END SUMMARY.

SUPREME COURT RULES
ON P-TOMS

2. (SBU) In response to a fundamental rights case filed by members of the JVP, on July 15 a three-member panel of the Supreme Court, led by Chief Justice Sarath N. de Silva, temporarily blocked four key sections of the P-TOMS agreement. Affected portions of the P-TOMS agreement include the operation of the regional fund, the functions of the regional committee, the creation of a project management unit in the regional committee, and the location of Kilinochchi as the regional committee's headquarters.

P-TOMS: CONSPIRACY
THEORIES ABOUND

3. (C) Many observers are surprised by the Court's decision to temporarily stay portions of the P-TOMS, and conspiracy theories abound. (Comment: Many observers are especially surprised because they expected the Chief Justice to side categorically with President Chandrika Bandaranaike Kumaratunga. End Comment.) One theory holds that President Kumaratunga, having signed the P-TOMS, colluded with the Chief Justice to stay the order so that she would be able to bring the JVP back into the Government. Another theory posits that the Chief Justice, seeing the President as a "lame-duck" and politically weak, issued the temporary stay in order to help members of the Court curry favor with presidential hopefuls, such as current Prime Minister Mahindra Rajapakse. One additional possibility is that the Court based its decision solely on the merits of the case as it saw them.

THE COURT HAS SPOKEN:
WHAT'S NEXT FOR P-TOMS?

4. (C) Despite the court's decision, the Government publicly maintains that the P-TOMS agreement can survive. The GSL also highlighted the Court's affirmation of the President's ability to sign an accord with the LTTE and the Court's de-facto recognition of the CFA. According to press reports, Presidential Spokesman Harim Peiris suggested that the GSL would still try to implement the P-TOMS since the bulk of the agreement remains intact.

5. (C) However, in a conversation with the Ambassador, Jayantha Dhanapala of the Government's Peace Secretariat expressed his surprise at the Court's decision and said he found the SC decision "strange." Dhanapala told the Ambassador that the GSL had already taken care of one of the SC's objections on the regional fund, and would now be able to show that the funds will be handled in accord with GSL law. Dhanapala also noted that the GSL would try to work with the LTTE to change the function and location of the Regional Committee. Nevertheless, press reports quote the

opposition United National Party (UNP) spokesman G.L. Peiris as saying that the SC decision removes so much substance as to render the P-TOMS agreement incapable of coherent implementation. G.L. Peiris told the Ambassador that the SC decision is "a shame."

16. (SBU) In response to the SC's decision, the LTTE Political Director S.P. Thamilselvan summoned Tamil National Alliance (TNA) Members of Parliament (MPs) to Kilinochchi to strategize. TNA MP Suresh Premachandran told pol FSN that the LTTE is disappointed over the SC's decision. Premachandran indicated that the LTTE has no confidence in the mechanism and sees no point in continuing with it. An Embassy source told pol FSN that the LTTE will no longer depend on GSL support or P-TOMS for aid distribution and will now attempt to obtain direct funds for tsunami relief.

COMMENT

17. (C) The GSL publicly claims that the P-TOMS can still be implemented, but without cooperation from the LTTE the P-TOMS would be useless. Despite the Government's brave face, the Supreme Court decision is a severe blow to President Kumaratunga's already wavering power. The Court has effectively gutted the P-TOMS and it is difficult for us to see how the GSL can save the mechanism. We agree that the Court's decision is strange. It affirmed the President's executive powers, then involved itself in details of the agreement effectively negating those powers. We do not subscribe to the mere convoluted conspiracy theories, but find it noteworthy that a Chief Justice widely considered to be in the President's pocket would issue such a decision.
END COMMENT.
LUNSTEAD